

Reference No. HRRT 023/2018

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN AN LI TAO

PLAINTIFF

AND BODY CORPORATE 198693

FIRST DEFENDANT

AND STRATA TITLE ADMINISTRATION LTD

SECOND DEFENDANT

AT AUCKLAND

BEFORE:

Ms GJ Goodwin, Deputy Chairperson

Ms B Klippel, Member

Dr M Koloamatangi, Member

REPRESENTATION:

Ms AL Tao in person

Mr E St John and Mr S Maloney for defendants

DATE OF HEARING: 31 August and 1 September 2023

DATE OF DECISION: 16 November 2023

DECISION OF TRIBUNAL¹

[1] Ms An Li Tao makes a number of allegations against Body Corporate 198693 (Body Corporate) and Strata Title Administration Ltd (Strata). She alleges that the Body Corporate and Strata discriminated against her by reason of her race, ethnicity and/or political opinion. She also says Strata racially harassed her. These allegations

¹ [This decision is to be cited as *Tao v Body Corporate 198693* [2023] NZHRR 39].

arise as a result of certain matters occurring around the time of, and after, the Annual General Meeting (AGM) of the Body Corporate held in 2016.

[2] The defendants deny all allegations. They say there has been no discrimination (either direct or indirect) and no racial harassment.

BACKGROUND

[3] Ms Tao together with her parents were, at all times relevant to this claim, the registered proprietors of one of the units in a development in New Lynn, Auckland, established under the Unit Titles Act 2010 (UT Act). The Body Corporate is the body corporate for that development. Strata is the Body Corporate manager and provides certain secretarial services for the Body Corporate.

[4] As a unit owner Ms Tao was a member of the Body Corporate.² The Body Corporate is responsible for managing the finance of and for administration relating to the development. The Body Corporate pays for maintenance and repairs, which it does through levies imposed on unit owners.³ The Body Corporate must hold an AGM in each year, at which a chairperson and body corporate committee members are elected.⁴

[5] In 2015 Ms Tao alleged the Body Corporate, the Body Corporate Chairperson and Strata had breached a number of their respective obligations to the unit owners. In relation to her complaints, Ms Tao took a number of unsuccessful actions against those persons.⁵

[6] As a consequence of their dissatisfaction with the Body Corporate, its Chairperson and Strata, Ms Tao and her parents did not pay their 2015 annual Body Corporate levy. Ms Tao encouraged other owners in the Body Corporate to do likewise.

[7] The first discrimination allegation Ms Tao makes relates to the refusal by Strata to record certain nominations for the position of Chairperson and the refusal by Strata and the Body Corporate to allow certain votes at the 2016 AGM. Ms Tao says these actions discriminated against her on the basis of her race, ethnicity or political opinion, in breach of s 53(1)(c) of the Human Rights Act 1993 (HRA).

[8] Secondly, Ms Tao refers to an alleged assault by Mr Jigar Pandya, the then Chairperson of the Body Corporate, against Ms Tao's father which she says took place at the 2016 Body Corporate AGM. Ms Tao says that the Body Corporate's failure to take disciplinary action against Mr Pandya and its then proceeding to elect Mr Pandya as the Chairperson at the AGM discriminated against her on the basis of her race or ethnicity, in breach of HRA, s 53(1)(c).

[9] Thirdly, Ms Tao refers to emails that an employee of Strata sent to other unit owners following the 2016 AGM. Ms Tao says these emails accused her of encouraging other unit owners to break the law and that they spread misinformation about Ms Tao. Ms Tao alleges this behaviour constituted racial harassment, in breach of HRA, s 63.

² Unit Titles Act 2010, s 76.

³ Unit Titles Act, s 121.

⁴ Unit Titles Act, s 89.

⁵ *Tao v Strata Title Administration Ltd & Anor* [2016] NZHC 814; *Tao v Strata Title Administration Ltd* [2016] NZHC 1821 [Costs]; *Tao v Strata Title Administration Ltd* [2016] NZCA 437; *Tao v Strata Title Administration Ltd* [2016] NZCA 594; *Tao v Strata Title Administration Ltd* [2016] NZSC 150; *Tao v Pandya and Jiang* [2018] NZDC 5404; *Tao v Strata Title Administration Ltd* [2018] NZHC 3381; *Tao v Waitakere District Court* [2019] NZHC 1304; and *Tao v Strata Title Administration Ltd* [2021] NZSC 23.

[10] Finally, Ms Tao alleges that the actions described at [8] above constitute indirect discrimination in breach of HRA, s 65.

[11] The responses of the defendants, denying these allegations are described subsequently.

FAILURE TO RECORD NOMINATIONS AND VOTES

Issues relating to nominations and votes

[12] The issues, derived from the allegations in Ms Tao's statement of claim, in relation to the alleged failure to record Chairperson and Body Corporate committee member nominations and to allow certain votes at the 2016 AGM are:

[12.1] Whether the Body Corporate and/or Strata treated Ms Tao differently from other owners of units in the Body Corporate in the same circumstances as Ms Tao, by reason of her race, ethnicity or political opinion (HRA, s 53(1)(c)) in respect of:

[12.1.1] Failing to record nominations of Ms Tao and Mr Li as Chairperson or committee member of the Body Corporate.

[12.1.2] Not accepting or recording certain votes of the owners of units in the Body Corporate.

[12.1.3] Refusing to correct notes in respect of the election of a person of a different ethnicity to Ms Tao, as the Chairperson of the Body Corporate.

[12.2] If the answer to any of [12.1.1] to [12.1.3] above is yes, what (if any) is the appropriate remedy.

The law

[13] It is unlawful for any person to treat any person who has acquired an interest or estate in any residential accommodation differently from any other persons in the same circumstances, by reason of any of the prohibited grounds of discrimination.⁶ The prohibited grounds of discrimination include race, ethnic or national origins or political opinion.⁷

[14] As the development in which Ms Tao was a joint unit owner was one under the UT Act, the alleged discrimination requires to be considered in light of the procedures and processes mandated by the UT Act. That Act governs the rights of unit owners and how they can exercise those rights. As referred to at [4] above, each body corporate must have a body corporate chairperson and a body corporate committee.

[15] The Unit Titles Regulations 2011 (Regulations) govern such matters as body corporate meetings, the election of the chairperson and the body corporate committee, and how the body corporate members may vote.

[16] The Regulations provide that a body corporate must elect a chairperson by ordinary resolution at every annual general meeting.⁸ The chairperson of a body corporate must

⁶ HRA, s 53(1)(c).

⁷ HRA, s 21(1)(f),(g) and (j).

⁸ Regulations, reg 10(1).

be the owner of a unit in the development.⁹ Likewise, a candidate for election to the body corporate committee must be the owner of a unit.

[17] A person cannot be a candidate for election as chairperson of a body corporate or as a member of a body corporate committee if, at the time nominations are required, that person has overdue levies or other amounts payable and owing to the body corporate.¹⁰ No owner may vote on a resolution put to a meeting of a body corporate unless all body corporate levies and other amounts that are from time to time payable to the body corporate in respect of the owner's unit have been paid.¹¹

Particulars of the alleged discrimination

[18] Ms Tao's evidence was that in April 2016 she was nominated to stand as the Body Corporate chairperson and as a committee member and that she nominated Mr Yan Li to stand for Body Corporate chairperson and as a committee member. Both Ms Tao and Mr Li are of Chinese ethnicity.

[19] The particulars of Ms Tao's allegations of discrimination are:

[19.1] That an employee of Strata, Ms Danli Ge, refused to record the nominations of herself and Mr Li (on the basis of their Chinese race or ethnicity) but recorded Mr Jigar Pandya (who is of Indian race or ethnicity) as the only nominated candidate for chairperson.

[19.2] The nominations of herself and Mr Li were valid.

[19.3] The agenda sent to the Body Corporate owners did not show any nominations for chairperson made for owners of Chinese ethnicity, but it should have done so. Strata acts as the Body Corporate secretary and chairs meetings but is not responsible for recording nominations, as it does not have any discretion to filter these, where they are valid. Strata should have made corrections when this matter was drawn to its attention.

[19.4] She was not permitted to vote at the AGM by reason of her race, ethnicity or political opinion.

[20] The defendants say there has been no discrimination as:

[20.1] While Ms Tao stated Strata does not have any discretion to filter nominations where those nominations are valid, the nominations of Ms Tao and Mr Li were not valid.

[20.2] Mr Li was not a unit owner and so could not stand for election as either the Body Corporate chairperson or as a committee member.

[20.3] Ms Tao's nominations for Body Corporate office were not valid because Ms Tao owed money to the Body Corporate at the relevant dates for her nominations.

⁹ Regulations, reg 10(4)(a).

¹⁰ Regulations, regs 10(2)(ab) and 24(3)(b).

¹¹ Unit Titles Act 2010, s 96(3).

[20.4] Ms Tao could not vote at the AGM as she owed money to the Body Corporate.

Consideration of the alleged discrimination

[21] Turning first to the nomination of Mr Li. Ms Tao says Mr Li's nomination for Body Corporate office was valid as he had an enduring power of attorney from his mother, who was a unit owner. That document was not in evidence before the Tribunal.

[22] In any event, the UT Act refers to being an "owner" of a unit as a pre-requisite for holding office in a body corporate. Owner is defined as the person or persons for the time being registered as the owner of the stratum estate in a unit under the Land Transfer Act 2017.¹² The Tribunal had before it copies of the titles, showing registered owners of units. Mr Li was not registered as owner on the title to any unit. We are satisfied that Mr Li, not being an owner, was not eligible to be nominated for election to any Body Corporate office.

[23] Turning to the nomination of Ms Tao. The dates of nomination for Ms Tao as Chairperson and a member of the Body Corporate committee were 2 April 2016 and 12 April 2016. There was some discussion as to whether, at those dates, Ms Tao did owe moneys to the Body Corporate. While Ms Tao paid outstanding levies on 4 May 2016, as at the dates of nomination the levy appeared to be outstanding. Also, in accordance with her own evidence, Ms Tao had refused to pay debt collection costs of \$632.50. Accordingly, there were amounts payable and owing to the Body Corporate at the relevant dates. This disqualified Ms Tao from being eligible to be nominated for election to any Body Corporate office under the UT Act.

[24] While Ms Tao and Mr Li were not eligible to be nominated to stand for office in the Body Corporate, other candidates of Chinese race or ethnicity were recorded as candidates able to be elected to stand for the Body Corporate committee. All members of the Body Corporate committee (other than Mr Pandya) who were elected were apparently of Chinese race or ethnicity.

[25] We do not find that the failure to record the nominations of Ms Tao or Mr Li was motivated by their race or ethnicity in breach of HRA, s 53(1)(c). It was simply that they were not eligible to be nominated for or elected to those positions pursuant to the UT Act and the Regulations. This allegation of discrimination fails.

[26] Similarly, Ms Tao's allegation that she was not permitted to vote by reason of her race or ethnicity fails. She was not eligible to vote under the UT Act statutory regime, as she owed money to the Body Corporate. The statutory regime applies neutrally. It makes no distinction on the grounds of race or ethnicity.

Political opinion

[27] For completeness, we note that Ms Tao also alleged that the various failures to record her nomination as chairperson, the subsequent refusal to correct this and the refusal to allow her to vote at the AGM also discriminated against her by reason of her political opinion, which is a prohibited ground of discrimination under HRA, s 21(1)(j).

[28] Her statement of claim refers to her "political opinion" as being disputing the management of the levy fund and building maintenance, voting as a member of the

¹² Unit Titles Act 2010, s 5(1).

Body Corporate and asking to remove Strata as manager of the Body Corporate. The contention is that her opinion on internal matters relating to Body Corporate administration constitutes a political opinion.

[29] There is no settled definition of political opinion in New Zealand. On a broad view political opinion could potentially encompass views about the distribution and utilisation of economic, social, and cultural power in a society. On a narrower view it could encompass being discriminated against due to any policies of government, or of the structure, composition, role, obligations, purposes or activities of government. Whichever view is adopted, political opinion does not extend to the kinds of private actions complained about by Ms Tao.¹³

[30] We do not accept that the matters pleaded amount to political opinion. Even if they did, Ms Tao does not explain how discrimination based on political opinion is triggered. This matter was not expanded upon by Ms Tao at the hearing. We find there is no evidence of discrimination on the ground of political opinion.

THE ALLEGED ASSAULT

[31] Ms Tao alleges that on 6 May 2016 (at the Body Corporate AGM) Mr Pandya, the then Chairperson of the Body Corporate, assaulted her father, Mr Naizuo Tao. Ms Tao says that in not “disciplining” Mr Pandya the Body Corporate discriminated against her by reason of her race or ethnicity. Mr Tao was not a party to this proceeding.

[32] Mr Tao’s evidence was that Mr Pandya ran towards him (Mr Tao), pushed him and hit him a few times. Likewise, Ms Tao’s evidence was that Mr Pandya ran towards her father, pushed him and got physical with him.

[33] Mr Pandya’s evidence was that a majority of owners at the AGM voted that a video recording of the AGM which was being taken should be stopped. Mr Pandya said that the person taking the video refused to turn it off. Accordingly, he walked towards the person taking the video in an attempt to take the recording device from him. Mr Pandya said that he never got to touch the device as the person making the video then apparently turned it off. He said that at no point did he touch Mr Tao.

Issues in relation to alleged assault

[34] The issues, again based on Ms Tao’s statement of claim, are:

[34.1] Whether the Body Corporate and/or Strata treated Ms Tao differently from other owners of units in the Body Corporate by reason of her race, ethnicity, or political opinion (HRA, s 53(1)(c)), in respect of not disciplining the Chairperson of the Body Corporate for an alleged assault.

[34.2] If so, what (if any) is the appropriate remedy.

¹³See *BHP New Zealand Steel Ltd v O’Dea* (HC) (1997) 4 HRNZ 456 [1997] ERNZ 667.

Consideration of allegations in relation to alleged assault

[35] Ms Tao played a video to the Tribunal which, she said, supported her evidence. Having viewed the video we prefer Mr Pandya's evidence of the incident over that of Ms Tao and Mr Tao.

[36] The video was taken by a third person (not Mr Tao) from the back of the room at which the AGM of the Body Corporate was held. It shows an acrimonious meeting at which tempers were frayed between divided owners. It also shows a vote being taken that video recording should not be permitted.

[37] We are not satisfied that the video discloses any assault by Mr Pandya against Mr Tao. Rather, Mr Pandya's concern was to implement the vote of the owners, passed at the AGM, that video recording of the AGM should not be permitted. We are, however, satisfied that the video does not show any discriminatory action by Mr Pandya against Mr Tao based on race or ethnicity.

[38] It is also unclear what action Ms Tao asserts the Body Corporate should have taken to discipline Mr Pandya. Ms Tao's evidence was that the Police had the video. Given that, it was not the role of the Body Corporate to further investigate or take action on the matter.

[39] No evidence was presented to support the allegation that the subsequent election of Mr Pandya as Chairperson at the AGM was discriminatory by reason of Ms Tao's race or ethnicity. Ms Tao has not persuaded us that the election was discriminatory, in breach of the HRA, s 53.

[40] This allegation of discrimination fails.

ALLEGED RACIAL HARASSMENT

[41] Ms Tao says that an employee of Strata, Ms Danli Ge, in sending various emails to owners in the Body Corporate, racially harassed Ms Tao.

[42] The emails are:

[42.1] Dated of 25 September 2015, to the other owners, in response to an earlier email Ms Tao had sent to those owners. There is a report on Ms Tao's legal action, a statement that costs are being incurred by the Body Corporate and a warning that the owners could themselves become liable for costs if they joined Ms Tao's legal actions.

[42.2] Dated 1 May 2016 to the other owners concerning Ms Tao's unsuccessful litigation against Strata and Mr Pandya and the associated costs awards.

[42.3] Dated 18 May 2016 advising of an appeal Ms Tao was making to the Court of Appeal. This email also referred to the need to progress to the AGM and advised the owners that they could not vote if they had not paid their Body Corporate debts.

Issues in relation to racial harassment

[43] The issue is whether the Body Corporate and/or Strata (acting through Ms Danli Ge) racially harassed Ms Tao in breach of HRA, s 63. Only if this is proven does the question of any remedy arise.

The Law

[44] Section 63 of the HRA sets out the elements required for racial harassment. That section provides:

63 Racial harassment

- (1) It shall be unlawful for any person to use language (whether written or spoken), or visual material, or physical behaviour that—
 - (a) expresses hostility against, or brings into contempt or ridicule, any other person on the ground of the colour, race, or ethnic or national origins of that person; and
 - (b) is hurtful or offensive to that other person (whether or not that is conveyed to the first-mentioned person); and
 - (c) is either repeated, or of such a significant nature, that it has a detrimental effect on that other person in respect of any of the areas to which this subsection is applied by subsection (2).
- (2) The areas to which subsection (1) applies are—
 - (a) the making of an application for employment:
 - (b) employment, which term includes unpaid work:
 - (c) participation in, or the making of an application for participation in, a partnership:
 - (d) membership, or the making of an application for membership, of an industrial union or professional or trade association:
 - (e) access to any approval, authorisation, or qualification:
 - (f) vocational training, or the making of an application for vocational training:
 - (g) access to places, vehicles, and facilities:
 - (h) access to goods and services:
 - (i) access to land, housing, or other accommodation:
 - (j) education:
 - (k) participation in fora for the exchange of ideas and information.

[45] To succeed Ms Tao must establish, on the balance of probabilities, that in the emails sent to the other Body Corporate owners:

[45.1] Ms Ge (on behalf of Strata) used language that expressed hostility against Ms Tao or brought into contempt or ridiculed Ms Tao on the ground of her colour, race, or ethnic or national origins;¹⁴ and

[45.2] The language used was hurtful or offensive to Ms Tao;¹⁵ and

[45.3] The language was repeated, or of such a significant nature, that it had a detrimental effect on Ms Tao in respect of one of the limbs of HRA s 63(2).

[46] These requirements are cumulative, so that if Ms Tao fails to satisfy us as to any of the limbs of [45] above, her allegation of racial harassment must fail.

Consideration of racial harassment

[47] Ms Tao's allegation of racial harassment can be dealt with and dismissed on the basis that during the hearing Ms Tao said that, rather than bringing her into contempt or

¹⁴ HRA, s 63(1)(a).

¹⁵ HRA, s 63(1)(b).

ridicule on the basis of her race or ethnicity, the emails did so on the basis of her political opinion. That is not a ground for a claim of racial harassment.

[48] Even if Ms Tao continued to maintain harassment on the basis of her colour, race, or ethnic or national origins her claim would fail. Ms Ge's emails make no mention of Ms Tao's colour, race, or ethnic or national origins. The emails are reports on Ms Tao's legal actions and on the judgments against Ms Tao. They make references to the fact that the Body Corporate, in defending Ms Tao's various actions, is incurring costs, which will fall on all of the Body Corporate members.¹⁶ These are statements of fact.

[49] We also note that Ms Tao did not identify which grounds under HRA s 63(2) are engaged. It is difficult to see how any of them could apply. Overall, Ms Tao's allegation of racial harassment fails.

[50] Finally (and for the sake of completeness) at the hearing Ms Tao's evidence that Ms Ge's emails discriminated against Ms Tao on the basis of her political opinion appeared to be an allegation of a breach of HRA s 53, rather than HRA s 63. The matters Ms Tao says constituted her "political opinion"¹⁷ do not amount to such opinion. We find there is nothing discriminatory in breach of HRA s 53 (on the grounds of political opinion or any other prohibited ground of discrimination) in Ms Ge's emails.

INDIRECT DISCRIMINATION

[51] Ms Tao alleges that, if she has not been directly discriminated against, she has (in the alternative) been indirectly discriminated against in the refusal by Strata to record certain nominations for the position of chairperson and in the refusal by Strata and the Body Corporate to allow certain votes at the 2016 AGM, in breach of HRA s 65.

The law

[52] Indirect discrimination is established by HRA s 65 which states:

65 Indirect discrimination

Where any conduct, practice, requirement, or condition that is not apparently in contravention of any provision of this Part has the effect of treating a person or group of persons differently on 1 of the prohibited grounds of discrimination in a situation where such treatment would be unlawful under any provision of this Part other than this section, that conduct, practice, condition, or requirement shall be unlawful under that provision unless the person whose conduct or practice is in issue, or who imposes the condition or requirement, establishes good reason for it.

[53] In summary, for indirect discrimination there are three elements:

[53.1] There must be conduct, a practice, requirement or condition.

[53.2] That does not apparently contravene any other provision of the HRA, but

[53.3] Which has the effect of treating a person or group of persons differently on one of the prohibited grounds of discrimination.

¹⁶ *Tao v Strata Title Administration Ltd & Pandya* [2016] NZHC 1821 at [37].

¹⁷ See [28] to [30] of this decision.

[54] If those elements are proven a defendant may escape liability by establishing a good reason exists for imposing the practice or requirement.¹⁸

Consideration of indirect discrimination

[55] The conduct or practice complained of was refusing to accept nominations for office on the Body Corporate and denying the right to vote at the AGM. That conduct or practice was simply the application of the mandatory statutory regime under the UT Act and Regulations. Ms Tao does not claim that the statutory regime itself is indirectly discriminatory, which would in any event need to be a claim advanced against the Attorney-General under Part 1A of the HRA. As the Body Corporate and Strata are required to follow the law, it is wrong to characterise the conduct or practice complained of as that of the Body Corporate or Strata. Rather, it is a statutory obligation. As such, it cannot give rise to a claim against private actors such as the Body Corporate or Strata.

[56] Further there is no evidence that the statutory requirements had the effect of treating a group of people differently on grounds of race or ethnicity such that Ms Tao, as a member of that group, has been discriminated against. The evidence showed that most people of Chinese ethnicity were able to comply with the UT Act requirements, as all members of the Body Corporate committee who were elected, other than Mr Pandya, were of Chinese ethnicity.

[57] The allegation of indirect discrimination fails.

CONCLUSION

[58] There has been no unlawful discrimination against, or racial harassment of, Ms Tao. Accordingly, no remedy can be ordered.

[59] The claims of Ms Tao against the Body Corporate and Strata are dismissed.

COSTS

[60] Costs are reserved. Unless the parties are able to reach agreement on the question of costs, the following procedure is to apply:

[60.1] The Body Corporate and Strata are to file their submissions within 14 days after the date of this decision. The submissions for Ms Tao are to be filed within a further 14 days with a right of reply by the Body Corporate and Strata within seven days after that.

[60.2] The Tribunal will then determine the issue of costs on the basis of the written submissions without any further oral hearing.

¹⁸ See the discussion in *Smith v Air New Zealand Ltd* [2011] NZCA 20, [2011] 2 NZLR 171 and *Haupini v SRCC Holdings Ltd* [2011] NZHRRT 20.

[60.3] In case it should prove necessary, we leave it to the Chairperson or Deputy Chairperson of the Tribunal to vary the foregoing timetable.

.....
Ms GJ Goodwin
Deputy Chairperson

.....
Ms B Klippel
Member

.....
Dr M Koloamatangi
Member